

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bruno DE LIGNIERES
Title: TREATMENT OF MASTALGIA WITH 4-
HYDROXY TAMOXIFEN
Appl. No.: 10/734,640
Filing Date: 12/15/2003
Examiner: U. Ramachandran
Art Unit: 1627
Confirmation 9061
Number:

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests reconsideration of the Patent Term Adjustment (PTA) determined for the application.

The Patent Office determined that the patent was entitled to 381 days of PTA. Applicant believes that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

In *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010), the Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do **not** 'overlap' under section 154 (b)(2)" (emphasis added).

Applicant has recalculated PTA for the captioned patent under the court's interpretation of the PTA statute (now adopted by the Patent Office), and has determined that the application is entitled to 943 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1290 days
(b) Total Applicant delay:	347 days
Final PTA Determination:	943 days

Applicant therefore respectfully requests that the patent be accorded 943 days PTA.

The patent is subject to a terminal disclaimer over US Patent 7,507,769.

As this Request is being filed due to a Patent Office error in interpreting and applying the PTA statute, Applicant believes no fee is due with this Request. However, the Commissioner is authorized to charge any fees which may be due to Deposit Account No. 19-0741.

Respectfully submitted,

Date March 23, 2010

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4094
Facsimile: (202) 672-5399

By Courtenay C. Brinckerhoff

Courtenay C. Brinckerhoff
Attorney for Applicant
Registration No. 37,288

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 088734-1111
 Application Number: 10/734640
 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	12/15/2003	0		
Edit Delete	Notice to File Missing Parts	03/19/2004	95		
	Notice to File Missing Parts + 3 months	06/19/2004	187		
Edit Delete	Response to Notice to File Missing Parts	10/18/2004	308		121
	14 month From Application date	02/15/2005	428		
	3 Year Period Starts	12/15/2006	1,096		
Edit Delete	Non-Final Office Action	03/12/2007	1,183	(755)	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/12/2007	1,275		
Edit Delete	Non-Final Office Action	08/23/2007	1,347		
	Non-Final Office Action + 3 months	11/23/2007	1,439		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/21/2008	1,529		90
Edit Delete	Final Office Action	05/29/2008	1,627		
	3 Year Period Stopped	08/28/2008	1,718	(622) 1290	
Edit Delete	Request For Continued Examination (no amendment)	08/29/2008	1,719		
Edit Delete	Request For Continued Examination (including amendment)	09/25/2008	1,746		
Edit Delete	Non-Final Office Action	12/16/2008	1,828		
	Non-Final Office Action + 3 months	03/16/2009	1,918		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/13/2009	1,976		58
Edit Delete	Non-Final Office Action	08/04/2009	2,059		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/03/2009	2,150		
Edit Delete	Terminal Disclaimer Received at PTO	01/20/2010	2,228		78
Edit Delete	Notice of Allowance	02/02/2010	2,241		
	Projected Patent Grant Date	08/17/2010	2,437		
			Totals:	1,290	347
			PTA:	943	